

## PROPOSED REGULATORY LANGUAGE

Adopt section 1399.391 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

### **1399.391. Citation and Fine - Unlicensed Personnel**

(a) The executive officer or his or her designee is authorized to determine when and against whom a citation will be issued and to issue a citation to any person, or employer of a person, who acts in the capacity of or engages in the business of a respiratory care practitioner in this state without having a license in good standing pursuant to the Act and who is not otherwise exempted from the provisions of the Act. Each citation for unlicensed activity shall contain an order of abatement, and shall be in writing and state with particularity the basis of the citation. "Employer," as used in this section, means any entity or person that employs or contracts with one or more persons who are acting in the capacity of, or engaged in the business of, a respiratory care practitioner, including but not limited to, any person, facility, company, corporation, partnership, organization or health maintenance organization.

(b) An administrative fine shall be paid within the time period designated in the citation, not to exceed 365 days. The amount of an administrative fine shall be separate from section 1399.381 and in accordance with section 3767(b)(2) of the B&PC.

(c) A citation shall inform the cited person or employer of his or her right to a hearing and that such a request for a hearing be made in writing within 15 calendar days after service of the citation. A citation shall be served upon the individual or employer by certified mail.

(d) In assessing an administrative fine and issuing an order of abatement, due consideration shall be given to the following factors for each violation:

- 1) the gravity of the violation;
- 2) the good or bad faith exhibited by the cited person or employer;
- 3) the history of previous violations;
- 4) the extent to which the cited person or employer has cooperated with the board's investigation.

(e) A cited person or employer who wishes to contest the citation may serve a written appeal on the board, within 15 calendar days after service of the citation, through the United States Postal Service by certified or registered mail.

(f) If the cited person or employer notifies the board that he/she/it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation with its fine or order of abatement, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) The failure of a cited person or employer to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the citation shall constitute a final order of the board and shall not be subject to further administrative review.

NOTE: Authority cited: Sections 3722, 3760, 3761, 3766, and 3767, Business and Professions Code. Reference: Section 3760, 3761, 3766, and 3767, Business and Professions Code.